

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOLLIS W. FIFER,

Defendant-Appellant.

UNPUBLISHED

February 18, 2003

No. 235322

Washtenaw Circuit Court

LC No. 00-001791-FC

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529, and sentenced as a second habitual offender to serve twelve to twenty-five years in prison. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of robbing a motel of \$271.93 by holding a bag-covered hand to the back of a motel employee’s head while demanding money from the cash drawer.

On appeal, defendant argues that his conviction should be overturned because no evidence was presented that he actually was armed with a weapon or that he threatened the victims with a weapon. In reviewing the sufficiency of the evidence, this Court must view the evidence in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the offense were proven beyond a reasonable doubt. *People v Hardiman*, 466 Mich 417, 420-421; 646 NW2d 158 (2002). This Court’s review is deferential, drawing all reasonable inferences and making credibility choices in support of the trier of fact’s verdict. *People v Nowak*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

The armed robbery statute requires a showing that the defendant was “armed with a dangerous weapon, or any article used or fashioned in a manner to lead the person so assaulted to reasonably believe it to be a dangerous weapon.” MCL 750.529. Standing alone, a victim’s subjective belief that the defendant was armed with a dangerous weapon is insufficient to support a conviction of armed robbery. *People v Jolly*, 442 Mich 458, 467-468; 502 NW2d 177 (1993). However, acknowledging the difficulty of proving actual possession of a dangerous weapon where the robber feigns possession to induce a victim to comply with his demands, our courts have held that a charge of armed robbery may be prosecuted with submission of “some objective evidence of the existence of a weapon or article” to the finder of fact. *Id.* at 468-469; *People v*

Taylor, 245 Mich App 293, 297-298; 628 NW2d 55 (2001). The sufficiency of objective evidence of the existence of a weapon or article is highly fact-dependent. For example, where no evidence was presented that the victim saw a weapon or article, or that the defendant feigned possession of a weapon, or that the defendant verbally threatened to shoot the victim, the evidence has been found to be legally insufficient to support an armed robbery conviction. See, e.g., *People v Banks*, 454 Mich 469; 563 NW2d 200 (1997); *People v Saenz*, 411 Mich 454; 307 NW2d 675 (1981). However, where evidence was presented that the defendant threatened to shoot the victim (or announced a robbery) and the victim observed a bulge in the robber's clothing in a place where a weapon could be concealed, a challenge to the sufficiency of the evidence has been rejected. See, e.g., *Jolly*, *supra*; *Taylor*, *supra*.

Here, defendant argues that no objective evidence of the existence of a weapon was presented, specifically challenging one victim's statement, "as far as I knew it was a gun," as purely speculative, and further noting that neither victim testified that defendant verbally threatened to shoot them. The case law does not support this argument. Given the aggravated nature of the confrontation, where defendant entered the motel with his face concealed by a hood or mask, jumped over the counter, grabbed one victim, held a bag-covered hand to the back of the victim's head, and forced the victim to turn over the cash drawer, we find it to be entirely reasonable for the victims to believe that defendant was armed with a dangerous weapon or article fashioned in a manner to lead them to believe it was a dangerous weapon. Further, the lack of verbal threat to shoot the victims is not dispositive. In *Taylor*, *supra* at 302-303, this Court explained:

[W]e decline to hold that a defendant must verbally threaten the victim with some specific bodily harm in order to obtain a conviction of armed robbery. If there is sufficient evidence that, during the course of the robbery, the defendant simulates a weapon so as to induce the victim to reasonably believe he is armed and, by word or conduct, threatens the victim by announcing a robbery or otherwise suggesting the potential use of the weapon, then the defendant may be convicted of armed robbery.

Accordingly, viewing the evidence in a light most favorable to the prosecution, sufficient evidence was presented to support defendant's armed robbery conviction.

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray